IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.2159 OF 2005
WITH
CIVIL APPLICATION NO.1079 OF 2005
IN
WRIT PETITION NO.2159 OF 2005

Shri Balaji Enterprises : Petitioner
V/s.
The State of Maharashtra & Ors. : Respondents

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Mr.Y. S. Jahagirdar with Mr.G. S. Godbole for the petitioner.
Mr.P. M. Patil, Assistant Government Pleader for respondent No.1.
Mr.N. V. Walawalkar for respondent No.3.
Mr.K. K. Singhvi with Mr.S. B. Shetye and Mr.R. V.More for respondent No.3.

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CORAM : DALVEER BHANDARI, C.J. &
S.A. BOBDE, J.

DATE : APRIL 28, 2005.

ORAL ORDER (Per S.A. Bobde,J.)

1. The petitioner, a partnership firm, has challenged the award of a contract for collection of octroi and toll by the Municipal Corporation of City of Sangli, Miraj and Kupwad for the year 2005-06. The contract has been awarded to respondent No.3 M/s.Yash Enterprises, a partnership firm.

2. The Commissioner of respondent No.2 Corporation published a notice inviting tenders for the period from 1.5.2005 to 30.4.2006. This notice was given due publicity in dailies Sakal, Pudhari and Loksatta, which are vernacular newspapers, and The Times of India, an English daily. Tenders were to be submitted till 4 p.m., on 14.3.2005. The following tenders were received:-

"Sr.No.	Name of the Tenderer	Tender Amount
1.	Balaji Enterprises, Sangli (Petitioner)	33,99,66,666/-
2.	Yash Enterprises Sangli (Respondent No.3)	34,02,00,000/-
3.	Shri Sai Agencies, Sangli	32,00,32,232/-"

Respondent No.3' sbid was the highest. In comparison to the income from octroi, in the preceding year, Respondent No.3 offered an additional income of Rs.9,02,00,000/- to the Corporation.

3. On 15.3.2005 tenders were opened in the

Commissioner's office in the presence of all the tenderers. The entire process is said to have been recorded on video and by minutes.

4. On 16.3.2005 the Standing Committee held a meeting and passed Resolution no.515 without any notice to the highest bidder. By this Resolution, the Committee decided to award the contract to the petitioner by allowing it to raise its bid to Rs.34,02,00,000/-.

5. This Resolution was passed by the Standing Committee in pursuance of a letter written by the petitioner making certain allegations that some partners of respondent No.3 have a criminal background and the firm itself is not registered and has no experience of working as an octroi and toll collection contractor. These allegations have been denied by the successful bidder which has, however, admitted that there is a prosecution pending against one of its partners since prior to the year 2002. It appears from the affidavit of respondent No.3 that

at the time of submission of the tenders, the petitioner and respondent No.3 firms were both unregistered. There is, however, a denial that respondent No.3 firm is still unregistered.

6. Alarmed with the reversal of what would have been the correct decision i.e., to grant the contract to the highest bidder and allowing the petitioner to revise its bid without notice to the other bidders, the Municipal Commissioner made a representation to the Government. On 16.3.2005 he wrote to the Principal Secretary, Urban Development Department, pointing out the facts and the manner in which the Standing Committee reversed the decision to grant the contract to respondent No.3. The Municipal Commissioner requested the Government to exercise its powers under section 451 of the Bombay Provincial Municipal Corporation Act, 1949, hereinafter referred to as the "Act", and further requested the Government for orders for accepting the bid that was the highest on the last date of submission of tenders.

7. The Government took into account the manner in which the Standing Committee rejected the tender of respondent No.3 and in exercise of its powers under section 451 of the Act, reversed the decision of the Standing Committee. It noted that the Committee awarded the contract to the second highest bidder by allowing it to make an offer equivalent to the highest bidder. The Government thus reversed Resolution No.515 passed by the Standing Committee of the Corporation awarding the contract to the petitioner. Aggrieved by that decision, the petitioner has approached this Court.

8. As far as the law is concerned, the Commissioner cannot enter into any contract on behalf of the Corporation without previous approval of the Standing Committee if the contract involves an expenditure exceeding Rs.3 lakhs, vide section 73 of the Act. There is no doubt, however, that the Standing Committee cannot act arbitrarily. Admittedly, the sale and acceptance of tender form was between the period 5.3.2005 and 14.3.2005 and only three tenders were received upto the last

date. On 15.3.2005 they were opened in front of the tenderers and their representatives and the tender of respondent No.3 was found to be the highest. There was, in our view, no justification for the Standing Committee to have favored the petitioner by allowing it to raise its offer and make it equivalent to respondent No.3, without any notice to the other bidders, including respondent No.3 and without giving an opportunity to respondent No.3 to offer an explanation for the charges made in the complaint of the petitioner.

9. In the circumstances, it is clear that the decision of the Standing Committee by Resolution No.515 dated 10.3.2005 was arbitrary in that the entire decision-making process was vitiated by unreasonableness and unfairness.

10. In this view of the matter, we find the decision of the State Government dated 29.3.2005 reversing the decision of the Standing Committee in exercise of the powers under section 451 of the Act justified and in accordance with law. It is true that the

decision does not read like a judgment of a Court of law in that it does not narrate all facts in detail and does not give detailed reasons. It is, however, clear from the decision taken by the Government that it noted that the Standing Committee allowed the petitioner to raise its offer and then grant the contract to it.

11. It is pertinent to note that the petition does not raise any *mala fides* or collateral motives against the Government in passing the impugned order.

12. The learned counsel for the petitioner contended that the Commissioner did something unusual in having issued the order to respondent No.3 in view of the fact that the agreement with respondent No.3 was executed on 23.4.2005 which was a fourth Saturday and not a working day. We are of the opinion that this fact by itself cannot vitiate the award of the contract to respondent No.3. The contract period is from 1.5.2005 to 30.4.2006. The Government reversed the decision of the Standing Committee on 29.3.2005. It appears that someone was

prompted to move this Court by Writ Petition No.1971 of 2005. The petition was withdrawn on 31.3.2005. In these circumstances, we do not consider it appropriate to regard the impugned decision as vitiated merely because the agreement was executed on a fourth Saturday which is said to be not a working day. The Commissioner has not committed an illegality in entering into an agreement about a week before the contract period was to begin.

13. In fact, having examined the substance of the matter, it is clear that the Standing Committee acted arbitrarily in entertaining the petitioner's complaint containing serious charges against respondent No.3 without any notice to it and allowing the petitioner to raise its bid, without affording an equal opportunity to the other bidders, including respondent No.3, to raise their bids. The State has, in its affidavit, relied on the instructions of the Central Vigilance Commission in respect of tenders in its letter dated 18.11.1998, the relevant portion of which reads as follows:-

"2.4 Tenders

Tenders are generally a major source of corruption. In order to avoid corruption, a more transparent and effective system must be introduced. As post tender negotiations are the main source of corruption, post tender negotiations are banned with immediate effect except in the case of negotiations with L1 (i.e. Lowest tenderer)."

The aforesaid instructions, which are salutary and would in principle apply to the case of the highest bidder, have been unnecessarily violated by the Standing Committee by entering into contract with a party which was not the highest bidder. We are of view that the State Government had ample powers in the matter under section 451 of the Act, the relevant portion of which reads as follows:-

"451. Power of State Government to suspend

or rescind any resolution or order, etc., of Corporation or other authority in certain cases.

(1) If the State Government is of opinion that the execution of any resolution or order of the Corporation or any other authority or that the doing of any act which is about to be done or is being done by or on behalf of the Corporation or such authority is in contravention of or in excess of the powers conferred by or under this Act or any other law for the time being in force, or is likely to lead to a breach of the peace or to cause injury or annoyance to the public or any class or body of persons, or is likely to lead to abuse or misuse of or to cause waste of municipal funds against the interests of the public, the State Government may, by order in writing suspend the execution of such resolution or order or prohibit the doing of any such act, for such period or periods as it may specify therein. A copy of such

order shall be sent forthwith by the State Government to the Corporation and to the Commissioner or the Transport Manager.

(2) .....

(3) .....

(4) .....”

We are of opinion that the power has been exercised by the Government, in accordance with law, in the circumstances of the case.

14. In the result, we find no merit in the petition which is hereby dismissed.

15. In view of the dismissal of the Writ Petition, Civil Application No.1079 of 2005 does not survive and the same stands disposed of.

Sd/-

CHIEF JUSTICE

Sd/-

S.A. BOBDE, J.